IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 588

C. E. RUSS,

Petitioner,

vs.

SOUTHERN RAILWAY COMPANY,

Respondent.

On Petition For Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF RAILWAY LABOR EXECUTIVES' ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PETITION FOR REHEARING OF ORDER

The decision of the court below, as well as those of other lower federal courts in recent cases involving refusal of carriers to comply with awards of the National Railroad Adjustment Board, have operated to completely frustrate the expeditious and fair settlement of so-called "minor disputes" in the railroad industry, through the statutory procedure which this Court has repeatedly described as compulsory arbitration. The unlimited opportunity afforded carriers to completely re-litigate disputes previously submitted to and decided by the Board not only prolongs their ultimate resolution, but defeats the objective of uniform interpretation of labor agreements in the railroad industry by an administrative tribunal composed of members having

particular expertise in their field. And the inequity of a system of adjudication denying employees any opportunity for review of an adverse decision at the Board level, but affording carriers a completely new trial on all awards favoring the employees, is glaringly apparent.

The instant case affords an excellent opportunity for a determination by this Court of the proper scope of review of monetary awards of the Board, an issue expressly reserved for consideration in an appropriate case in *Republic Steel Corporation v. Maddox*, ... U.S. ..... (No. 43, October Term, 1964, January 25, 1965; footnote 14 to the Court's opinion). The court below, while appearing to concede that a non-monetary award is final and binding and not subject to review on the merits, has held that a monetary award is subject to complete review in a trial *de novo*, on *both* the monetary and non-monetary aspects of the Board's ruling — thus completely emasculating the Board's exercise of its specialized knowledge with respect to the proper interpretation and application of railroad labor agreements. By contrast, the Court of Appeals for the Fifth Circuit, in *Railroad Trainmen v. Louisville & Nashville R.R.*, 334 F. (2d) 79, cert den. ..... U.S. ....., 13 L. Ed. (2d) 345, rehearing den. ..... U.S. ....., 13 L. Ed. (2d) 579, granted a complete review *de novo* in an action to enforce a *non-monetary* award. Both rulings appear directly in conflict with this Court's opinion in *Locomotive Engineers v. Louisville & N. R. Co.*, 373 U.S. 33, where the Court says:

> "The several decisions of this Court interpreting Section 3 First have made it clear that this statutory grievance procedure is a mandatory, exclusive, and comprehensive system for resolving grievance disputes." (373 U.S. 38).
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> . . . . . .
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> ". . . We do not deal here with nonmoney awards, which are made 'final and binding' by Section 3 First

(m). The only portion of the award which presently remains unsettled is the dispute concerning the computation of Humphries' 'time lost' award, *an issue wholly separable from the merits of the wrongful discharge issue . . . .*" (373 U.S., 40-41; emphasis supplied.)

We submit that *de novo* judicial review of any but the money aspects of awards of the National Railroad Adjustment Board operates to defeat the clear Congressional objectives of expeditious settlement of minor disputes and grievances through compulsory arbitration; uniform and consistent interpretation and application of agreements on the property of a single carrier or, in the case of multi-carrier national agreements, throughout the industry; and the benefits of the Board's expertise gained through practical knowledge of the railroad industry and its customs and usages. The problem is compounded where, as here, a reviewing court attempts to resolve the dispute by applying strict principles of commercial contract law and the common law of master and servant. Moreover, and of particular concern to the Association and its component organizations, is the utter unfairness of what amounts to a form of double jeopardy with respect to claims of employees, whereas a Board award in favor of a carrier is immune from further attack.

The need for clarification by this Court of the scope of review of awards of the National Railroad Adjustment Board is increasingly pressing. The so-called "minor disputes" over the proper interpretation and application of agreements are frequently a major source of friction between management and labor, and involve substantial issues with respect to rights and benefits of large groups of employees. For employees to have to wait for years, as is often the case, before receiving a Board determination of these issues, and then face the prospect of having a favorable

award nullified in a *de novo* judicial proceeding, is a source of widespread irritation and frustration.

Recent decisions of this Court confirming the absence of the right to strike to enforce awards, and the exclusive nature of the statutory enforcement procedure, coupled with the doctrine of complete trial *de novo* enunciated by the lower federal courts with respect to the enforcement action, have encouraged many carriers to ignore the Board's awards almost as a matter of course. As a result, litigation such as the instant case is becoming increasingly frequent, and the Congressional objectives which the Board was created to serve are being defeated.

For the foregoing reasons it is respectfully submitted that the petition for reconsideration of the Court's order denying a writ of certiorari should be granted.

Respectfully submitted,

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Dated at Toledo, Ohio, this
4th day of March, 1965.

CERTIFICATE OF SERVICE

I, Richard R. Lyman, one of the attorneys for the Railway Labor Executives' Association, as amicus curiae, do hereby certify that on the 4th day of March, 1965, I served the attached motion for leave to file brief as amicus curiae and brief of amicus curiae upon all parties of record herein by depositing copies thereof in the United States mails, via airmail, postage prepaid, addressed to W. E. Fitzgerald, Burwell Building, 602 S. Gay Street, Knoxville 2, Tennessee, and Harold A. Ross, 1736 Standard Building, Cleveland 13, Ohio, attorneys for petitioner, C. E. Russ; James Hardy, 15th and K Streets, N.W., Washington, D.C. 20005, and Stanley L. Temko, Hugh B. Cox, and W. Graham Claytor, Jr., Union Trust Building, Washington, D.C. 20005, attorneys for respondent, Southern Railway Company.

Richard R. Lyman